IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.No.2148 of 1999

Era C.Murali .. Appellant

Vs

1. Indian Overseas Bank
   rep. by its Chief Officer
   762, Anna Salai
   Madras-2.

2. The Revenue Divisional Officer
   Mettur Dam, Salem District.

3. The Collector
   of Salem District
   Salem. .. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 8.9.1999 made in W.P.No.2616 of 1992.

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For Appellant : Mrs.V.J.Latha for Mr. K. Elango
For Respondents: Mr.E.Sampath Kumar,
Addl. Govt Pleader
for respondents 2 & 3
Mr.K.Srinivasamoorthy for
Mr. N.G.R.Prasad,for 1st respondent

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JUDGMENT

(Judgment of this Court was delivered by
F.M.IBRAHIM KALIFULLA,J.)

The appellant is aggrieved against the order of the learned Single Judge dated 8.9.1999 made in W.P.No.2616 of 1992, in and by which, the cancellation of Community Certificate of the appellant made by the third respondent in his order dated 26.1.1992 came to be confirmed.

2. Assailing the order of the learned Single Judge, dated 8.9.1999, Mrs.V.J.Latha, learned counsel appearing for the appellant, would contend that there are different Division Bench Judgments holding that when the Collector of the concerned District, while cancelling the Community Certificate of a person, relied upon a report of his subordinate, namely, Revenue Divisional Officer in any discreet enquiry held by the said officer, such report ought to have been furnished to the concerned person before proceeding to cancel the Community Certificate issued in his favour. In fact, in the Division Bench Judgment reported in 2000 Wr.L.R. 148 (A.SELVARAJ v. STATE OF TAMIL NADU, THROUGH ITS SECRETARY, ADI DRAVIDAR WELFARE DEPARTMENT, FORT ST.GEORGE, MADRAS-9 AND OTHERS), to which one of us (Justice P.D.Dinakaran) was a party, it has been held as under in para 2:

> "2. ..... A reading of the order of the Collector makes it clear that he has placed reliance on the said reports while deciding upon the genuineness or otherwise of the community certificate submitted by the appellant. In our judgment, since the said reports have been relied upon while deciding the claim of the appellant in respect of the community certificate and since no notice was given to the appellant in regard to the same the enquiry conducted by the Collector and the consequent order passed by him stand vitiated on the ground that the same suffers from vice of non-observance of the principles of natural justice. The said order is accordingly quashed and set aside. The matter would ordinarily be required to be remitted back to the District Collector for a fresh enquiry after affording the appellant copies of the said reports and after affording him a reasonable opportunity of being heard. We are now informed that a District High Level Caste Scrutiny Committee has been constituted in terms of the directions issued by the

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Supreme Court in the case of Madhuri Patil V. Additional Commissioner, Tribal Development (A.I.R. 1995 SC 94) The present enquiry will therefore be required to be conducted by the said District High Level Caste Scrutiny Committee. In the circumstances, present case is now remitted back to the District High Level Caste Scrutiny Committee, which will now issue fresh notice to the appellant, furnish relevant documents pertaining to the aforesaid reports in regard to the enquiry conducted by R.D.O. And afford the appellant a reasonable opportunity of being heard and thereafter decide the claim made by the appellant on its own merits and in accordance with law. ..."

3. Again in the judgment reported in 1999(2) MLJ 147 (G.MUTHULAKSHMI v. THE COLLECTOR, MADURAI DISTRICT AND OTHERS), rendered by one of us, (Justice P.D.Dinakaran) after considering all the earlier Division Bench Judgments, wherein a consistent view to the very same effect has been taken while setting aside the order of the Collector has reiterated the same view. The earlier Division Bench Judgments, are reported in "1991(1) Wr.L.R.68 (D.SELVARAJU v. BHARAT HEAVY ELECTRICALS LTD., AND ANOTHER), 1996 Wr.L.R. 482 (D.ILLAMARAN v. GOVERNMENT OF INDIA, REP. BY CHIEF ENGINEER, AIR, SOUTHERN ZONE, MADRAS), 1996 Wr.L.R. 484 (R.K.SEKAR v. THE DISTRICT COLLECTOR, CHENGAI-MGR DISTRICT) and in W.A.No.241 of 1996 (V.KANNAGI v. RESERVE BANK OF INDIA AND ANOTHER).

4. Having regard to the above consistent view taken by this Court in all the above said decisions and in view of the fact that in the case on hand when the third respondent passed the order dated 26.1.1992 by relying upon the report of the second respondent, a copy of which was admittedly not furnished to the appellant, it will have to be held that the ultimate order of the third respondent dated 26.1.1992 stood vitiated on that sole ground. Therefore, in all fairness, the learned Judge ought to have set aside the same and directed the third respondent to give fresh opportunity to the appellant. We are, therefore, constrained to set aside the order of the learned single Judge as well as that of the third respondent. However, in view of the subsequent decision of the Hon'ble Supreme Court reported in "MADHURI PATIL v. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT (A.I.R. 1995 SC 94)", while setting aside the order of the third respondent dated 26.1.1992, we direct the third respondent to refer the correctness of the Community Certificate issued to the

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appellant to the appropriate District High Level Caste Scrutiny Committee which shall issue a fresh notice to the appellant, furnish relevant documents including the report of the second respondent and after giving a reasonable opportunity to the appellant, decide the claim of the appellant's Community Certificate on its own merits and in accordance with law.

5. We also make it very clear that till such time the Community status of the appellant is decided by the District High Level Caste Scrutiny Committee, the appellant would not be entitled for any further service promotion based on the Community status of the appellant.

The Writ Appeal stands allowed with the above observations. No costs. C.M.P.No.18104 of 1999 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The Revenue Divisional Officer
   Mettur Dam, Salem District.

2. The Collector
   of Salem District
   Salem.

3.The Chief Officer,
  Indian Overseas Bank,
  762, Anna Salai, Madras. 2

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1 cc to the Govt. Pleader, SR. No. 54885
1 cc to Mr. N.G.R. Prasad, Advocate, SR. 54831

W.A.No.2148 of 1999

SMK (CO)
kk 28.12.04

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